

The Law of Armed Conflict

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Background

- ◆ **The Law of Armed Conflict (LOAC) arises from a desire among civilized nations to prevent unnecessary suffering and destruction while not impeding the effective waging of war.**
- ◆ **A part of customary international law and treaties, LOAC regulates the conduct of armed hostilities.**
- ◆ **LOAC applies to international armed conflicts and in the conduct of military operations and related activities in armed conflict, however such conflicts are characterized.**

LOAC Foundations

- ◆ LOAC comes from both customary international law and treaties. Customary international law, based on practice that nations have come to accept as legally required, establishes the traditional rules that govern the conduct of military operations in armed conflict.
- ◆ Article VI of the US Constitution states that treaty obligations of the United States are the “supreme law of the land,” and the US Supreme Court has held that international law, to include custom, are part of US law. This means that treaties and agreements the United States enters into enjoy equal status as laws passed by Congress and signed by the President. Therefore, all persons subject to US law must observe the United States’ LOAC obligations.
- ◆ In particular, military personnel must consider LOAC to plan and execute operations and must obey LOAC in combat. Those who violate LOAC may be held criminally liable for war crimes and court-martialed under the Uniform Code of

The Geneva Conventions of 1949

- ◆ **Some of the most important LOAC rules come from the Geneva Conventions of 1949.**
- ◆ **The Geneva Conventions consist of four separate international treaties.**
- ◆ **These treaties aim to protect combatants and noncombatants from unnecessary suffering who may become wounded, sick, shipwrecked, or POWs during hostilities.**
- ◆ **They also seek to protect civilians and private property. The four treaties govern the treatment of wounded and sick forces, POWs, and civilians during war or armed conflict.**

Basic LOAC Principles

◆ **Three important LOAC principles govern armed conflict:**

- (1) military necessity**
- (2) distinction**
- (3) proportionality**

Military Necessity

- ◆ **Military necessity requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective.**
- ◆ **Attacks shall be limited strictly to military objectives.**

Military Necessity

- ◆ In applying military necessity to targeting, the rule generally means the United States Military may target those facilities, equipment, and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission.
- ◆ An example of compliance with the principle of military necessity would be our targeting and destruction of Iraqi SCUD missile batteries and of Iraqi army and air forces during Operation Desert Storm. These actions quickly achieved air superiority and hastened the Iraqi military's defeat

Military Necessity

- ◆ **Military necessity also applies to weapons review. AFI 51-402, Weapons Review, requires the Air Force to perform a legal review of all weapons and weapons systems intended to meet a military requirement. These reviews ensure the United States complies with its international obligations, especially those relating to the LOAC, and it helps military planners ensure military personnel do not use weapons or weapons systems that violate international law.**
- ◆ **Illegal arms for combat include poison weapons and expanding hollow point bullets in armed conflict.**
- ◆ **Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with the LOAC.**

Distinction

- ◆ **Distinction means discriminating between lawful combatant targets and noncombatant targets such as civilians, civilian property, POWs, and wounded personnel who are out of combat.**
- ◆ **The central idea of distinction is to only engage valid military targets. An indiscriminate attack is one that strikes military objectives and civilians or civilian objects without distinction.**
- ◆ **Distinction requires defenders to separate military objects from civilian objects to the maximum extent feasible. Therefore, it would be inappropriate to locate a hospital or POW camp next to an ammunition factory.**

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Proportionality

- ◆ **This principle encourages combat forces to minimize collateral damage - the incidental, unintended destruction that occurs as a result of a lawful attack against a legitimate military target.**
- ◆ **Proportionality seeks to prevent an attack in situations where civilian casualties would clearly outweigh military gains.**
- ◆ **Proportionality prohibits the use of any kind or degree of force that exceeds that needed to accomplish the military objective.**

Proportionality

- ◆ **Proportionality compares the military advantage gained to the harm inflicted while gaining this advantage.**
- ◆ **Proportionality requires a balancing test between the concrete and direct military advantage anticipated by attacking a legitimate military target and the expected incidental civilian injury or damage.**
- ◆ **Under this balancing test, excessive incidental losses are prohibited.**

Chivalry

- ◆ **Addresses the waging of war in accord with well-recognized formalities and courtesies.**
- ◆ **It permits lawful ruses, such as camouflage, false radio signals, and mock troop movements.**
- ◆ **It forbids treacherous acts (perfidy). This involves misuse of internationally recognized symbols or status to take unfair advantage of the enemy, such as false surrenders, placing anti-aircraft artillery in hospitals, and misuse of the Red Cross or the Red Crescent (in Islamic countries).**

Combatants

- ◆ **The Geneva Conventions distinguish between:**
 - (1) Lawful Combatants**
 - (2) Noncombatants**
 - (3) Unlawful Combatants**

Lawful Combatants

- ◆ A lawful combatant is an individual authorized by governmental authority or the LOAC to engage in hostilities.
- ◆ A lawful combatant may be a member of a regular armed force or an irregular force. In either case, the lawful combatant must be commanded by a person responsible for subordinates; have fixed distinctive emblems recognizable at a distance, such as uniforms; carry arms openly; and conduct his or her combat operations according to the LOAC.
- ◆ The LOAC applies to lawful combatants who engage in the hostilities of armed conflict and provides combatant immunity for their lawful warlike acts during conflict, except for LOAC violations.

Noncombatants

- ◆ **These individuals are not authorized by governmental authority or the LOAC to engage in hostilities. In fact, they do not engage in hostilities.**
- ◆ **This category includes civilians accompanying the Armed Forces; combatants who are out of combat, such as POWs and the wounded, and certain military personnel who are members of the Armed Forces not authorized to engage in combatant activities, such as medical personnel and chaplains.**
- ◆ **Noncombatants may not be made the object of direct attack. They may, however, suffer injury or death incident to a direct attack on a military objective without such an attack violating the LOAC, if such attack is on a lawful target by lawful means.**

Unlawful Combatants

- ◆ **Unlawful combatants are individuals who directly participate in hostilities without being authorized by governmental authority or under international law to do so.**
- ◆ **For example, bandits who rob and plunder and civilians who attack a downed airman are unlawful combatants.**
- ◆ **Unlawful combatants who engage in hostilities violate LOAC and become lawful targets. They may be killed or wounded and, if captured, may be tried as war criminals for their LOAC**

Undetermined Status

- ◆ **Should doubt exist as to whether an individual is a lawful combatant, noncombatant, or an unlawful combatant, such person shall be extended the protections of the Geneva Prisoner of War Convention until status is determined.**
- ◆ **The capturing nation must convene a competent tribunal to determine the detained person's status.**

Military Targets

- ◆ **LOAC governs the conduct of aerial warfare.**
- ◆ **The principle of military necessity limits aerial attacks to lawful military targets.**
- ◆ **Military targets are those that by their own nature, location, purpose, or use make an effective contribution to an enemy's military capability and whose total or partial destruction, capture, or neutralization in the circumstances existing at the time of an attack enhance legitimate military objectives.**

Targeting Personnel

- ◆ **Military attacks against cities, towns, or villages not justified by military necessity are forbidden.**
- ◆ **Attacking noncombatants for the sole purpose of terrorizing them is prohibited.**
- ◆ **Civilians may not be made the object of a direct attack, However, a military target need not be spared because its destruction may cause collateral damage that results in the unintended death or injury to civilians or damage to their property.**

Targeting Personnel

- ◆ **Commanders must take into consideration the extent of unintended indirect civilian destruction and probable casualties that will result from a direct attack on a military objective and, to the extent consistent with military necessity, seek to avoid or minimize civilian casualties and destruction.**
- ◆ **Anticipated civilian losses must be proportionate to the military advantages sought.**

Targeting Objects

- ◆ LOAC specifically describes objects that shall not be the targets of a direct attack.
- ◆ **Basic Rule: Military operations must be directed at military objectives; objects normally dedicated to peaceful purposes enjoy a general immunity from direct attack.**
- ◆ Specific protection applies to medical units or establishments; transports of wounded and sick personnel; military and civilian hospital ships; safety zones established under the Geneva Conventions; and religious, cultural, and

Targeting Objects

- ◆ If protected objects are used for military purposes, they lose their immunity.
- ◆ If these protected objects are located near lawful military objectives (which LOAC prohibits), they may suffer collateral damage when the nearby military objectives are lawfully engaged.

Enemy Military Aircraft and Crew

- ◆ **Enemy military aircraft may be attacked and destroyed wherever found, unless in neutral airspace.**
- ◆ **An attack on enemy military aircraft must be discontinued if the aircraft is clearly disabled and has lost its means of combat.**
- ◆ **Airmen who parachute from a disabled aircraft and offer no resistance may not be attacked.**
- ◆ **Airmen who resist in descent or are downed**

Enemy Civilian Aircraft

- ◆ **An enemy's public and private nonmilitary aircraft are generally not subject to attack because LOAC protects noncombatants from direct attack.**
- ◆ **However, civil aircraft may be lawfully attacked under certain conditions. Such as when a civil aircraft initiates an attack, it may then be considered an immediate military threat and attacked.**
- ◆ **An immediate military threat justifying an attack may also exist when reasonable suspicion exists of a hostile intent, as when such aircraft approaches a military base at high speed or enters enemy territory without permission and disregards signals or warnings to land or proceed to a designated place.**

Enemy Military Medical Aircraft

An enemy military medical aircraft is generally not subject to attack under LOAC. However, at least six instances may lead to a lawful attack.

- (1) Initiates an attack.**
- (2) Is not exclusively employed as a medical aircraft.**
- (3) Does not bear a clearly marked Red Cross, Red Crescent, or other
recognized symbol and is not otherwise known to
be an exclusively
medical aircraft.**
- (4) Does not fly at heights, at times, and on routes
specifically agreed to by
the parties to the conflict and is not otherwise
known to be an
exclusively medical aircraft.**

Treatment of Persons in U.S. Custody

Underlying Policy: All persons held in U.S. armed forces custody will be given humanitarian care and treatment *from the moment they fall into the hands of the U.S. forces* until final release or repatriation

Captured Enemy Personnel

- ◆ **LET ENEMY SOLDIERS SURRENDER:** You do not always have to kill the enemy to accomplish your mission. Enemy soldiers may reach the point where they would rather surrender than fight. They may signal a desire to surrender in a number of ways. A commonly recognized signal is a white flag and if an enemy clearly indicates that he is surrendering it is illegal to fire upon him. However, always be careful about a ruse to expose your position; just because one enemy combatant displays a desire to surrender does not mean that others will follow.
- ◆ **YOU ARE RESPONSIBLE FOR CAPTIVES:** Higher headquarters determines whether or not someone is a prisoner of war. In the field, you must treat all people, including captured enemy soldiers, humanely. Once enemy soldiers surrender to you or are transferred to your control, you are responsible for their safety,

Captured Enemy Personnel

- ◆ **DON'T TAKE PERSONAL PROPERTY FROM CAPTIVES:**
You may search captives for items of military intelligence value like weapons, maps, or military documents, and these items may be seized. However, you should not take protective equipment such as gas masks, mosquito nets, or parkas, though you should obviously search them thoroughly. You should not take personal items with no military value like jewelry or personal photos. Only an officer may order you to take money from a captive, and the officer must give the enemy POW a receipt.
- ◆ **SOME PRISONERS MAY BE FORCED TO WORK:**
You may require enlisted POWs to perform physical labor as long as it is not dangerous and does not contribute to the war effort. NCO POWs, though, may only be required to perform supervisory tasks. Officer POWs may not be required to work, although they may do so if they wish.³⁰

Captured Enemy Personnel

- ◆ **ESCAPE ATTEMPTS BY PRISONERS:** Prisoners are not prohibited from trying to escape attempts as long as they do not involve violence. You may only use disciplinary punishment for non-violent escape attempts. POWs are noncombatants; however, if a POW uses weapons or violence to escape, they give up that protected status. You may use force to prevent escapes, but the use of weapons against escaping POWs is an extreme measure. Therefore, you must always give a warning first, if possible. You may recapture POWs who use force in their escape and try them by courts-martial.
- ◆ **DON'T USE COERCION IN QUESTIONING CAPTIVES:** You may question captives in order to obtain military information of immediate value to your mission but never use threats, torture or other forms of coercion. An enemy captive is only required to give you his name, rank, service number and date of birth. Combat experience has proven that useful information has been gained from captives who have been treated humanely. Information gained through torture or coercion is often

Potential Consequences of Mistreatment

- ◆ Article 92, UCMJ: Failure to obey a lawful regulation
- ◆ Article 92, UCMJ: Dereliction of duty
- ◆ Article 93, UCMJ: Cruelty and maltreatment
- ◆ 18 USC Section 2340A, Crime of torture
- ◆ 18 USC Section 2441, War Crimes
- ◆ Additionally...there can be ramifications under international law

Abu Ghraib

- ◆ **Navy SEALs face abuse court-martial hearing:** Two Navy SEALs will face court-martial proceedings for allegedly assaulting a detainee who died at the Abu Ghraib prison in Iraq. (29 Oct 04)
- ◆ **8 years for Abu Ghraib soldier:** SSgt Ivan "Chip" Frederick was sentenced to eight years in prison, a dishonorable discharge and a reduction in rank to private. (21 Oct 04)
- ◆ **Iraq abuse: U.S. soldier sentenced:** Army Spec Armin Cruz was sentenced to eight months' confinement in the Abu Ghraib prison abuse scandal, demoted to a private and given a bad conduct discharge. (11 Sep 04)

Abu Ghraib

- ◆ **Soldier sentenced to 1 year in Iraq prisoner abuse:** Spec. Jeremy Sivits received the maximum sentence for his role in the Iraqi prisoner abuse scandal as part of a plea deal with prosecutors that leaves him open to testify against other soldiers. (25 May 04)
- ◆ **Still awaiting courts-martial:** Cpl Charles Graner, Sgt Javal Davis, Spec Sabrina Harman, Spec Megan Ambuhl and Pfc. Lynndie England.

Weapons

- ◆ **The Law of Armed Conflict describes the weapons that may be used in battle. International treaties seek to limit the unnecessary suffering inherent to some weapons.**
- ◆ **All weapons used by the Air Force are reviewed to make sure they are legal. If the Air Force issues you a weapon, you can use it. Be sure to use the weapon in the form it is issued to you.**
- ◆ **Altering the weapon can make a legal weapon illegal.**

Weapons

- ◆ **Napalm, flame throwers, white phosphorous, and nuclear weapons are all legal weapons.**
- ◆ **Poisons, asphyxiating (choking agents), and other gases are illegal. Biological weapons are also illegal.**
- ◆ **Projectiles must be jacketed to be legal. They cannot be expanding or exploding. Therefore glass projectile bullets are illegal. Hollow point bullets are also illegal for most people to use.**
- ◆ **If you are authorized to use hollow point bullets, the Air Force will issue them to you. This is not a decision you make on your own.**

Riot Control Agents

- ◆ **The most commonly used riot control agent is tear gas.**
- ◆ **Under the Chemical Weapons Convention riot control agents have been outlawed as a means of warfare. However, they can still be used to control noncombatants.**
- ◆ **The only person who can authorize the use of riot control agents is the National Command Authority. So although we can still use riot control agents, make sure you know you are authorized to use them and when.**

ENEMY PROPERTY AND WAR TROPHIES

- ◆ **It is U. S. Policy and tradition that the desire for souvenirs in a combat theater should not:**
 - **Blemish the Conduct of Combat Operations;**
 - **Result in the Mistreatment of Enemy Personnel;**
 - **Dishonor the Dead;**
 - **Distract from the Conduct of Operations;****or,**
 - **Result in Other Unbecoming Activities.**

ENEMY PROPERTY AND WAR TROPHIES

- ◆ **Military members may not take from a theater of operations as a souvenir an object formerly in the possession of the enemy--except in accordance with DOD regulations.**
- ◆ **An individual authorized to retain war trophies, including war trophy firearms, will be issued DD Form 603-1 (War Trophy Registration/Authorization) by the appropriate major commander**
- ◆ **Violations can be prosecuted under the UCMJ (and in some cases, other criminal provisions of the United States Code)**

Bottom Line: If You Don't have Written Authorization, Don't Try To Bring It Back

ENEMY PROPERTY AND WAR TROPHIES

- ◆ During Gulf War, there were 19 AF cases involving war trophy violations resulting in:
 - 2 LORs;
 - 14 Article 15s;
 - 1 SPCM;
 - 1 GCM; and
 - 1 case where no action was taken
- ◆ GCM - Member smuggled AK-47 from CENTCOM AOR to Great Britain, hidden in an A-10; Sold weapon to British Citizen. Sentenced to a BCD, confinement for 1 year, and reduced to AB.

LOAC and You

- ◆ **PREVENT WAR CRIMES:** If you see any crime about to be committed, you should act to prevent it. In the event the crime directly and immediately endangers your life or the life of another person, you may use the amount of force necessary to prevent it. Use of deadly force is justified only to protect life and only under extreme conditions when all other courses of action are ineffective.
- ◆ **DON'T VIOLATE THE LAWS OF WAR:** If you violate any of the laws of war, you commit a crime and are subject to punishment by U.S. courts-martial. In addition, an international tribunal or an enemy court may be able to take actions against you. Even if you had orders to commit the act, you are personally responsible. Superior orders are not a defense.

LOAC and You

- ◆ **REPORT CRIMES THROUGH YOUR CHAIN OF COMMAND:** You must report crimes immediately through your chain of command. If the crime involves your immediate supervisor, report it to their superior. You may also report the violation to the inspector general, security forces, chaplain, or judge advocate.

If you have read and understood the entire Law of Armed Conflict Training you have fulfilled your annual requirement to attend LOAC training.

Congratulations.

LOAC

Registration

This form must be submitted to receive credit for completing the training.

Please print this page, fill it out, and take it to your unit training monitor. If you do not know who your unit training monitor is check with your orderly room.

Rank:

Last Name:

First Name: MI:

Unit:

Office Symbol:

DSN:

Date Training Completed: